BEFORE THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

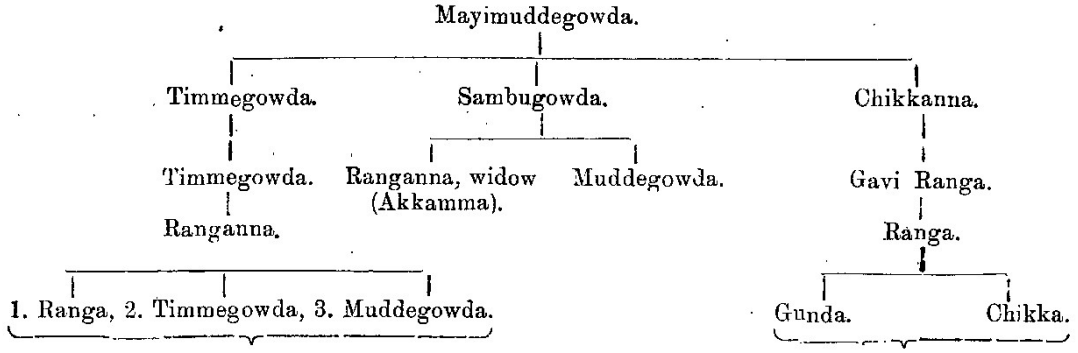
Appeal No. 73 *of* 1905-06.

Appellants and plaintiffs	*Versus*	Respondents and defendants
1. Ranga, 2. Timmegowda 3. Muddegowda, minor, by 1st appellant } Sons of Ranganna.		1. Gunda, 2. Chikka, sons of Ranga.

Subject.

Appeal against the judgment and decree of the Deputy Commissioner of the Tumkur District, adjudging the pateli office of the Hettanahalli village in the Tumkur Taluk, in favor of the respondents in preference to the appellants.

The facts of the case appear sufficiently from the decision of Government No. 3727-34—Pet. 530, dated the 22nd October 1897, passed in Appeal No. 104 of 1896-97, and from the following decision. The parties are related to each other as below :—



Decision.

Both the parties claim descent from a common ancestor named Mayimuddegowda, the plaintiffs being the great grandsons of his eldest son Timmegowda, and the defendants the great grandsons of his youngest son Chikkanna. In the face of the decision passed by Government in Appeal No. 104 of 1896-97, it is not now open to the plaintiffs to repudiate the relationship of the defendant's father Ranga to the said Mayimuddegowda. Nor has such repudiation been satisfactorily established. The relationship above referred to may therefore be accepted as an unquestionable fact.

2. The dispute relates to a hereditary pateli office. The last male holder of the office by right of succession to Mayimuddegowda was his second son Sambugowda's son Muddegowda, on whose death it devolved upon his brother Ranganna's widow Akkamma. The suit of 1895-96, which terminated in the appeal above adverted to, was between the present plaintiffs represented by their mother and guardian, and the aforesaid Akkamma and the present defendant's father Ranga. It was held that Akkamma's title was unassailable, that the registry should remain in her name during her lifetime and that the defendant's father Ranga (then 2nd defendant) should be declared heir after her death as against the plaintiffs. The reason why the then 2nd defendant was declared entitled to priority over the plaintiffs was that he was one degree more nearly related to the common ancestor than the plaintiffs. That individual subsequently predeceased Akkamma. The declaration in his favor did not consequently take effect; in other words, the contingency contemplated by the Government decision dated the 22nd October 1897, has not as a matter of fact happened. There is thus no question of resjudicata. Irrespective, then, of the previous litigation, the point now for determination, is which of the parties to the present suit is entitled to succeed Akkamma, who died in January 1903. The Assistant Commissioner decreed in favor of the plaintiffs and the Deputy Commissioner in that of the defendants.

3. Both plaintiffs and defendants are, as shown above, Mayimuddegowda's descendents in the fourth degree. As such they stand on a par with each other. The only difference is that the plaintiffs are the progeny of the elder branch, while the defendants belong to the younger branch. As a set-off against this there is the fact that the defendant's father was in office for several years as Akkamma's gumasta and that but for his premature demise before Akkamma, he would in pursuance of the order of 1897-98, have succeeded her in preference to the plaintiffs and thus acquired a right transmissible to his sons, the defendants. In view of past Proceedings, Government are of opinion that the case is an exceptional one in which the ends of

justice could only be met by recognizing the title of both the parties and giving them an opportunity of enjoying the office by rotation.

4. In modification, therefore, of the Deputy Commissioner's decision Government direct that both the 1st plaintiff and the 1st defendant be appointed and registered as patels and that the office be held by them in turns of five years each.

No. R. 12273—*R. M.* 234-05-4, *dated Bangalore,* 23*rd March* 1906.

Copy of the above is forwarded to the Deputy Commissioner of the Tumkur District, together with the records received with his docket No. 546, dated the 7th December 1905.

Appeal No. 104 *of* 1902-03.

Appellants.	*Versus*	Respondent
Basve Gowda and others of Jodi Danaikenhalli village in the Belur Taluk.		Kondi Naranachar and other vrittidars of the said Jodi village.

Subject.

Claim of the appellants to exemption from the payment of full assessment on the Gowda Umbli lands in their possession in the Jodi Danaikenhalli village in the Belur Taluk.

The facts of the case appear sufficiently from the following:—

Decision.

The appellants claim exemption from the payment of full assessment on the Gowda Umbli lands in their enjoyment.

2. On the 11th October 1905 Government remitted the case to the Survey and Settlement Commissioner with the following observations:—

"It is admitted that the lands in question are Gowda Umbli lands, that they are entered as such in the Inam Register, that the holders thereof were only paying a jodi both before and after the Inam Settlement that the village was surveyed and settled and taken under Government management in 1884, that full assessment was being levied during the period of such management, and that since the restoration of the village to the Inamdars there has been a dispute as to whether what they are entitled to levy is jodi or full assessment. It is also conceded that one of the appellants continues to do the duties of 'Grama Patel.' The Inamdars (respondents) offer to pay the appellants (or rather the one that does the Grama Pateli duties) a Potgi allowance in the same way as in Government villages. There seem to be more than one kind of Patel in this village as in other malnad tracts. The Gowda Umbli lands were not noticed at the time of the Inam Settlement. (*Vide* Inam Superintendent's docket No. 64, dated the 28th February 1903.) The mere fact that for some time Government had the management of the village and enforced from the Gowdas payment of full assessment, does not seem to prejudicially affect the rights (if any) of the Gowdas as against the Inamdars." "The Survey and Settlement Commissioner and the Inam Superintendent will be requested to favor Government with his opinion as to whether having regard to all the circumstances of the case the appellants (Gowdas) can be compelled to forego their Umbli Hak and to pay full Survey assesssment, the Grama Patel alone in return receiving a Potgi allowance from the Inamdars as in Sirkar maidan villages."

3. That officer has now given his opinion in favor of the appellants, as will be seen from the following extract from his report:—

"The village of Danaikenhalli had the Survey Settlement introduced long ago, at the instance of the Inam Superintendent, Colonel Cole. Docket No. 530, dated 17th March 1879."

"The Survey Settlement was introduced by an Assistant Commissioner but no settlement of the particular case under reference was made although in the Pahanisud and in the Putpahani specific mention is made of the Gowda Umbli lands concerned. The remaining settlement papers contain no mention of these lands but the settlement was carelessly carried out, even the Phaisal Patrik not having been prepared."

"So far as can be ascertained by comparing the Pahanisud with the Inam Register, which latter gives the Gowda Umbli (Jodi) as Rs. 33-5-2, the survey assessment of the land comes to very little more than the old jodi."

"The Potgi settlement has also been effected but no land emoluments appear to Patel (sic) and I am not aware whether the Potgi amount has been regularly paid to the officiator or not."

"I think that under the circumstances of this village which has been restored to the Inamdars under circumstances regarding which I have no information, the appellant Gowdas should either pay the old jodi on the lands plus half the difference between the old jodi and the full survey assessment on the principle of Inam. Rule VIII (*f*), or the Potgi should be revised. I recommend the former alternative. At any rate the appellants cannot, in my opinion, be deprived of their Umbli hak."

4. Government, in concurrence with Colonel Grant, direct that the appellants' Umbli hak be left undisturbed and that their liability be restricted to the old jodi on the lands in question plus half the difference between the old jodi and the full survey assessment on the principle of Inam Rule VIII (*f*).

No. R. 12145—*Mis. P.* 41-03-10, *dated Bangalore, 22nd March* 1906.

Copy of the above is forwarded to the Deputy Commissioner of the Hassan District, together with the records received with his letter No. 913, dated the 27th May 1905.

Review Application No. 3 *of* 1905-06.

Petitioners (appellants)	*Versus*	Counter-petitioner (respondent)
1. Dod Basappa, 2. Sidda Lingappa.		Basappa, minor, by guardian Sidda Lingappa.

Subject.

Claim to the Pateli office of Chowdanayakankoppa in the Shikarpur Taluk.

The facts of the case appear sufficiently from the following :—

Decision.

One Neeli Siddaiya was the original Patel of the village in question. On his death some fifty years before the Potgi Settlement of 1886-87 his second son Gurrappa, who was literate, was appointed his successor in preference to his first son Siddaiya, who was illiterate. Gurrappa was confirmed at the settlement above mentioned. The Deputy Commissioner then observed, "he (Gurrappa) combines in himself both the hak and his right as actual officiator. I do not see reason to disturb his possession. He will be confirmed as hakdar and Registerdar. Appellant's (first son's son's) name appears under Registerdar in the Register of 1865. He may perhaps be entitled to get the hak after Gurrappa's death or removal from the appointment." In pursuance of this order of confirmation, dated the 21st January 1887, Gurrappa continued to hold the office until his death, which occurred in 1900. His son Siddappa predeceased him leaving a son (the respondent) who has been appointed his successor. The appellants 1 and 2 who are the son and the grandson, respectively, of the original Patel's eldest son, sued to establish their preferential right and to oust the respondent. The suit failed in the Courts both of the Assistant Commissioner and of the Deputy Commissioner. Hence this appeal, in support of which reliance is placed firstly on the rules of primogeniture and secondly on the observation contained in the Deputy Commissioner's order of 1887. Government hold that the appellant's contention is not entitled to prevail. The younger son was as much a hakdar as the elder. When the office fell vacant, the better of the two had to be appointed and not necessarily the senior in birth. The rule relied on is not literally and invariably enforcible in such cases regardless of other qualifications. The choice fell upon the more competent of the sons, *viz.*, Gurrappa, the grandfather of the respondent. He held the office without interruption for such a long period as sixty to seventy years. His son's son is naturally entitled to take his place in preference to his brother's son or grandson. The Deputy Commissioner's order of 1887 did not make a final pronouncement in favor of the present appellants but only referred incidentally to what might possibly happen in a certain event. That remark was in the nature of an *obiter dictum* which did not bind either Gurrappa or his heirs to the extent of precluding them from contesting its correctness on the occurrence of the event therein contemplated. That being so, it is clear that the authorities below did not err in their estimate of the significance to be attached to the observation. For obvious reasons, the respondent has been rightly preferred to the appellants and Government see no reason to interfere.

The appeal fails and must be dismissed.

No. R. 12359—*R. M.* 251-04-10, *dated Bangalore, 26th March* 1906.

Copy of the above is forwarded to the Deputy Commissioner of the Shimoga District, together with the records received with his letter No. 620—452, dated the 14th February 1906.

Appeal No. 96 of 1904-05.

Appellant	*Versus.*	Respondent
Basalingavva (widow of Basalingappa junior)		Mallappa (son of Basalingappa senior).

Subject.

Appeal against the order of the Deputy Commissioner of the Shimoga District, declining to allow the claim of the appellant urged on behalf of her minor (adopted) son Basavannaiya, to the pateli office of Tadasanahalli village in the Shikarpur Taluk, and directing that the respondent should continue to do the duties thereof until evicted by an order of a competent court.

The facts of the case appear sufficiently from the following :—

Decision.

The village in question had long had two patels apparently unconnected with each other. At the time of the potgi settlement, which took place in 1886, it was found that the two patels both named Basalingappa held the office by turns of two years each. Basalingappa senior, then in actual possession, was confirmed with a direction that on his death he should be succeeded by the other Basalingappa or his rightful heir. The former held the office until 1898, when at his instance it was transferred to his son, the respondent. He survived the transfer for three years and then died in 1901. Basalingappa junior, who was to succeed him under the order of 1886 had predeceased him. His widow, the appellant, claimed the office on behalf of her alleged adopted son Basavannaiya. The Deputy Commissioner, however, rejected the claimon the ground that he was unable to modify his predecessor's order of 1898, giving the pateli absolutely to the respondent. Hence this appeal.

2. Basalingappa junior, had two sons, both of whom died very young. His widow is shown to have adopted Basavannaiya under an authority given to her by him. The Deputy Commissioner finds in favor of the factum and validity of the adoption. In this finding Government fully concur.

3. But for the transfer of 1898, to which the appellant was not a party and by which therefore neither her husband nor his heir could be prejudicially affected, Basavannaiya would be entitled to step in on the death of Basalingappa senior, which, as observed above, occurred in 1901. The arrangement of 1886 contemplated alternate life-long possession first, by Basalingappa senior, then by Basalingappa junior or his heir, then again by the former's heir and so on. But the trend of recent decisions prefers a periodical rotation to life-term turns; and Government are disposed to follow it in the present case. With this slight modification, Government see no reason why the claims of both the hakdars should not be recognized and given effect to as distinctly decided at the settlement of 1886.

4. In reversal, therefore, of the Deputy Commissioner's order, Government direct that the appellant's son Basavannaiya's right to a participation in the pateli in question be admitted, and that the office be held by both parties by turns of ten years each, Basavannaiya having his first turn as soon as he attains his majority and is found duly qualified.

No. R. 12159—MIS. 328-04-6, DATED BANGALORE, 22ND MARCH 1906.

Copy of the above is forwarded to the Deputy Commissioner of the Shimoga District, together with the records received with his letter No. 618—450, dated the 14th December 1905.

B. K. VENKATA VARADA IYENGAR,
Secy. to Govt., Gen. & Rev. Dept.